

Plaintiff's Name DAVID POICE
Inmate No. 4-1025391
Address KCJ - C8 DORM
P.O. Box 1699
Hanford, CA 93230

FILED

AUG 19 2021

IN THE UNITED STATES DISTRICT COURT CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY U.S.D.C. DEPUTY CLERK
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID POICE

(Name of Plaintiff)

1:21-cv-1045-DAD-BAM

(Case Number)

vs.

HANFORD P.D. K9 UNIT

OFFICER SCANDURA

(Names of all Defendants)

AMENDED CIVIL RIGHTS COMPLAINT UNDER:

☒ 42 U.S.C. 1983 (State Prisoner)

☐ Bivens Action [403 U.S. 388 (1971)] (Federal Prisoner)

RECEIVED

AUG 19 2021

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

I. Previous Lawsuits (list all other previous or pending lawsuits on additional page):

A. Have you brought any other lawsuits while a prisoner? Yes X No _____

B. If your answer to A is yes, how many? 1

Describe previous or pending lawsuits in the space below. (If more than one, attach additional page to continue outlining all lawsuits in same format.)

1. Parties to this previous lawsuit:

Plaintiff DAVID POICE

Defendants FRESNO CO. SHERIFF'S DEPT.

2. Court (if Federal Court, give name of District; if State Court, give name of County)

U.S.D.C - EASTERN DISTRICT OF CALIFORNIA

3. Docket Number 1:21-cv-01046-HBK **4. Assigned Judge** HELENA M. BARCH-KUCHTA

5. Disposition (Was the case dismissed? Appealed? Is it still pending?)

PENDING

6. Filing Date (approx.) 7/2/20217. Disposition Date (approx.) PENDING**II. Exhaustion of Administrative Remedies**

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Prior to filing suit, inmates are required to exhaust the available administrative remedy process, *Jones v. Bock*, 549 U.S. 199, 211, 127 S.Ct. 910, 918-19 (2007); *McKinney v. Carey*, 311 F.3d 1198, 1999 (9th Cir. 2002), and neither futility nor the unavailability of money damages will excuse the failure to exhaust, *Porter v. Nussle*, 534 U.S. 516, 524, 122 S.Ct. 983, 988 (2002). If the court determines that an inmate failed to exhaust prior to filing suit, the unexhausted claims will be dismissed, without prejudice. *Jones*, 549 U.S. at 223-24, 127 S.Ct. at 925-26.

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes X No _____

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes X No _____

C. Is the process completed?

Yes X

If your answer is yes, briefly explain what happened at each level.

I WAS DENIED AT EACH LEVEL AND TOLD THAT MY ISSUES CANNOT
BE RESOLVED HERE AND THAT THEY LOST MY PROPERTY AFTER
I WAS ATTACKED BY K9.
— SEE EXHIBIT A —

No _____

If your answer is no, explain why not.

III. Defendants

List each defendant's full name, official position, and place of employment and address in the spaces below. If you need additional space please provide the same information for any additional defendants on separate sheet of paper.

A. Name HANFORD POLICE DEPT. is employed as COPS

Current Address/Place of Employment HANFORD CAL, 93230

B. Name OFFICER SCAMOURA is employed as H.P.D

Current Address/Place of Employment HAMBO, CAL 93230

C. Name _____ is employed as _____

Current Address/Place of Employment _____

D. Name _____ is employed as _____

Current Address/Place of Employment _____

E. Name _____ is employed as _____

Current Address/Place of Employment _____

IV. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary. Must be in same format outlined below.)

Claim 1: The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.):

7th & 8th & 9th AMENDMENT VIOLATIONS

FREEDOM FROM CRUEL & UNUSUAL PUNISHMENT AND
EQUAL PROTECTION CLAUSE, ETC.....

Supporting Facts (Include all facts you consider important to Claim 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Claim 1.):

I WAS ILLEGALLY SEARCHED BY POLICE OFFICER AFTER HE LET THE
K9 DOG GO ON ME FOR NO REASON. THE DOG WRAPPED INTO MY
FLESH ALL THE WHILE K9 HANDLER WAS VIOLENTLY STRIKING ME
IN THE BACK OF THE HEAD, AND KICKING ME. PLAINTIFF ASSERTS
HE SUFFERED OVER 62 BITES AND HAS THE K9 TEETH MARKS (SCARS)
TO SHOW PROOF. AS A RESULT OF THIS ILLEGAL SEARCH &
SEIZURE I SUFFERED A LOSS OF MY BELONGINGS AND EMOTIONAL

DISTRESS. I DID NOTHING WRONG TO WARRANT THIS POLICE BRUTALITY BY EXCESSIVE FORCE. ^{STARTED} ALL THIS ~~STARTED~~ ON 7TH ST. IN HANFORD, CA AT THE UNITED MARKET BUS STOP ON 3-22-21 AND THEN LET THE DOG GO ON ME. A BLOCK AWAY IS WHERE THE DOG BIT ME WHILE I WAS DEFENDING MYSELF FROM SUCH EXCESSIVE FORCE.

Claim 2: The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.):

CRUEL & UNUSUAL PUNISHMENT

Supporting Facts (Include all facts you consider important to Claim 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Claim 2.):

OFFICER SCHMOURA HAD NO RIGHT TO PUT ME IN HARMS WAY NOR TO ENDANGER MY LIFE THE WAY HE DID. THE EXCESSIVE FORCE AND POLICE BRUTALITY SUFFERED WAS INHUMANE AND CRUEL & UNUSUAL PUNISHMENT. I WAS PHYSICALLY & MENTALLY ABUSED BY THIS OFFICER. DEFENDANT IS NAMED ACCORDINGLY "SEE EXHIBIT B"

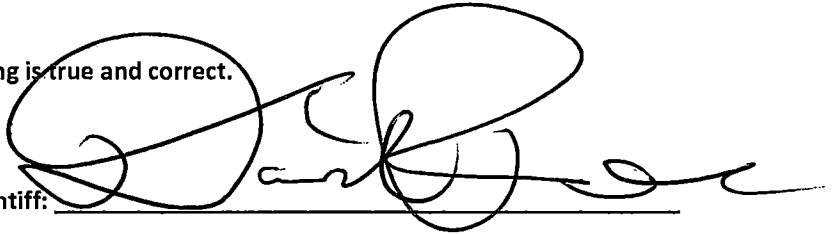
V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

PLAINTIFF SEEKS MONETARY AND DECLATORY RELIEF IN THE AMOUNT
OF TO BE DISCUSSED UPON MOTION BEING GRANTED, AS WELL AS FOR
THE DEFENDANTS TO BE PROSECUTED AND BROUGHT TO JUSTICE TO THE
FULLEST EXTENT OF THE LAW, AS WELL COMPENSATED FOR PUNITIVE
DAMAGES.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 8/15/21

Signature of Plaintiff: 

EXHIBIT

A

Grievance #122649633

2/26/21
+1/2

Profile Photo:



Inmate Info

Name: David Ponce (1977-10-08)
Booking Number: H1025341
Nationality:
Submitted Date: 04/08/21 14:47
Submitted from Location/Room: Dayroom B3/Pod B-3
Current Location/Room: C8-Dorm/Pod C-8
Facility: Kings County Jail CA

Audit Photo:



Form Info

Category: Grievance
Form: Inmate Grievance
Internal Tag: No Tag

Grievance Info

Status: CLOSED by T. Day 5217
Facility Deadline: 05/11/21 23:59
Grievance Level: 3
Inmate can reply: No
Disposition @ 1: Resolved at my level

Summary of Grievance:

My do process was over do I was arrested on 03/23/21 at 2:04 and my arraignment was not till Friday after 1:00pm no warrant

Details of Grievance:

Details of Grievance::

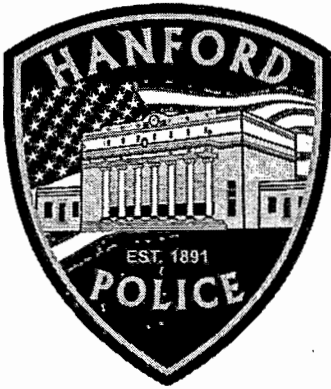
No warrant was issued so why was the dog unlished on me an why was I arrested .Also my phanny pack did not come to jail with me every one in town seen me with it and what it had in it .So I would like my stuff and all official that was president names and videos of cars and body cam that the officer said he was recording .I feel like I was arrested to get my phanny pack'.Also I was arrested a few times that week and had my phanny pack on me, also officer in Strafford took my golden spoon .Arresting Sargent said he wood get it back .I still have not heard anything about this so please can we get this resolved

DATE/TIME	USER	ACTION	DETAILS
04/29/21 15:24	T. Day 5217	Changed Status	From 'Open' to 'Closed'
04/29/21 15:24	T. Day 5217	Changed Disposition	Changed Disposition for level 3 with value " to 'Resolved at my level'
04/29/21 15:24	T. Day 5217	Staff Response	"...which officer took me," is vague and unclear. You were arraigned by Judge Cluifini. Contact Hanford PD to identify the officer that read you your rights. - Lieutenant Day
04/21/21 12:54	David Ponce	Appeal	I would like to no which officer took me and which Juge arraigned me and who read me my rights I went to court on Friday not that date and my booking sheet says 3/23/21 at 2:04:59
04/21/21 12:54		Changed Status	From Closed to Open due to Appeal
04/21/21 12:54		Changed Level	From 2 to 3 due to Appeal
04/21/21 10:08	V. Rodriguez 5197	Changed Status	From 'Open' to 'Closed'
04/21/21 10:08	V. Rodriguez 5197	Changed Disposition	Changed the disposition value for level 2 from to Resolved at my level
04/21/21 09:58	V. Rodriguez 5197	Staff Response	I received your grievance on April 16, 2021 and have had an opportunity to review your first and second level narrative and staff's first level response. I reviewed your Inmate file through the Kings County Jail Management system and reviewed court records provided by the Kings County Superior Courts. You were arrested on March 22, 2021 at 2311 hours; per the courts minute order you were arraigned via Blue Jeans video conferencing from the Kings County Jail on March 24, 2021 at 1407 hours. Mr. Ponce you were arraigned within the 48 hours after your arrest as required per Penal Code 825. You are correct the property you are claiming that is missing did not come to the jail with you, ("Phanny pack"). The property was not brought into the Kings County Jail. The property was not inventoried nor listed on the booking sheet by the arresting officer therefore; it was not logged into your Inmate file as being stored by KCJ. You will need to contact the arresting agency for information and location of your property. I have provided you with the contact information. Furthermore, questions

DATE/TIME	USER	ACTION	DETAILS
04/21/21 09:56	V. Rodriguez 5197	Document added	Document david ponce property shet booking sheet.pdf was added. Shared with Inmate: No
04/12/21 17:27	David Ponce	Appeal	This is not true It was on Friday 3/27/21 after 1:00pm when I seen by the juged and was charge with this crime
04/12/21 17:27		Changed Status	From Closed to Open due to Appeal
04/12/21 17:27		Changed Level	From 1 to 2 due to Appeal
04/08/21 15:50	R. Bejarano 5329	Staff Response	Mr. Ponce, I have had a chance to review your grievance. I had already spoken to you about this issue and explained that any items withheld by the arresting agency for evidence will not be received by the jail. You can contact the arresting agency for further information about your property. The items you are looking for are not being held at the Kings County Jail. After looking into your arrest timeline I seen that you were arrested late March 22nd and taken for arraignment on March 24th. That is well within the limits of adequate time to have you seen by a judge. I consider this grievance resolved at my level.
04/08/21 15:50	R. Bejarano 5329	Changed Status	From 'Open' to 'Closed'
04/08/21 15:50	R. Bejarano 5329	Changed Disposition	Changed the disposition value for level 1 from to Resolved at my level
04/08/21 14:47	David Ponce	Submitted New	My do process was over do I was arrested on 03/23/21 at 2:04 and my aralnment was not till Friday after 1:00pm no warent

EXHIBITS

B



HANFORD POLICE DEPARTMENT

Parker Sever, Chief of Police

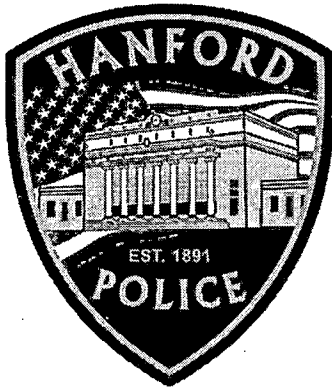
July 16, 2021

David Ponce,

In order to get a copy of the police report you will need to contact the District Attorney's Discovery Desk due to this being an open investigation still. As for the officer that arrested you that is Officer Scandura, and I have attached a complaint form for you to fill out and mail back to the Hanford Police Department to submit your complaint.

Respectfully,

Hanford Police Department



HANFORD POLICE DEPARTMENT
Parker Sever, Chief of Police

April 29, 2021

Subject: David Ponce
AKA:

DOB: 10/08/1977

We do not show record of your fanny pack, rocks or tent being booked into evidence/property for the date and time you listed. If you have any further information that can help us locate your items please send correspondence.

Please call my office if you need any additional information.

Respectfully,

Hanford Police Department
(559) 585-4754 Office
(559) 585-2151 Fax